

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.27364 of 2005

Dated:03.11.2006

Between

Thota Mohana Rao

.....Petitioner

and

1.The District cooperative Officer,
Guntur and others.

...Respondents

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.27364 of 2005

ORDER:

This writ petition is filed seeking a Mandamus to declare the action of the 1st respondent in issuing proceedings No. 6346/2004/N, dated 16.4.2005 and the consequential proceedings in Claim No.1/2005-06, dated 16.12.2005 issued by the 2nd respondent as arbitrary and illegal and contrary to the provisions of the Andhra Pradesh Co-operative Societies Act, 1964 (for short 'the Act').

It appears that the petitioner was the elected Chairman of the Primary Agricultural Co-operative Society, Anupalem. His original elected term of office was from 1.8.1995 to 1.8.2000. Since, elections could not be conducted immediately, he

was made person-in-charge of the society and he continued as such up to 6.8.2003. After conducting elections, he renounced the office. Thereafter, an enquiry under Section 51 of the Act was initiated vide proceedings dated 9.12.2004 and a report was submitted on 15.4.2005. On the basis of the said report, the impugned proceedings have been issued viz., (1) to take immediate steps for seizure of the record from the Sub DI.C.O., Sattenappalli and the Enquiry Officer, to keep the same under custody (2) to initiate action under Section 60 (1) of the Act for recovery of the misappropriated amount (3) pending finalization of the recovery, take action under Section 73 of the Act (4) Criminal complaint may be lodged against the petitioner before the Station House Officer concerned (5) to initiate action under Section 59 of the Act keeping the secretary under suspension duly directing the society for ordering domestic enquiry and for initiating necessary disciplinary action and (6) appropriate direction to the society under Section 54 of the Act. Pursuant to the said order,

attachment order was issued by the Deputy Registrar of Cooperative Societies, Guntur under Section 73 of the Act, dated 16.12.2005. Aggrieved by the same, the present writ petition is filed.

The facts are not much in dispute. The only complaint of the petitioner is that conducting of the enquiry under Section 51 of the Act is unwarranted and he was never informed any of the misconduct enumerated in the impugned order dated 16.4.2005. In fact, some other society was merged into this society, and the dues to be recovered, relating to the other society, are merged with this society. Therefore, the petitioner could not have been made responsible for any of such allegations made against him. In fact, the petitioner made all his efforts to recover the dues against the members and there is nothing against him in the report under Section 51 of the Act. Therefore, the impugned order directing the authorities to take action against the petitioner, is illegal and arbitrary.

The enquiry report submitted under Section 51 of the Act is not under challenge. The impugned

orders are passed as a consequence to the enquiry report under Section 51 of the Act. Therefore, it cannot be said that no enquiry can be gone into under section 60 (1) of the Act and the surcharge authority is only a fact finding authority. As such, nothing prevents the petitioner from going before surcharge authority and defending himself. However, the direction that the criminal complaint may be filed against the petitioner before the Station House Office is concerned, does not stand the scrutiny of law. Unless and until it is found that the petitioner has committed certain irregularities and the same are proved before the surcharge authority, no action can be initiated against the petitioner, who was ex-president, particularly who has already renounced the office.

In view of the above, insofar as filing of criminal complaint against the petitioner is concerned, the impugned order dated 16.4.2005 is set aside and the rest of the order is confirmed.

Writ petition is allowed to the extent indicated above. No costs.

03-11-2006

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